

## ***FISH & WILDLIFE COMMISSION AGENDA ITEM COVER SHEET***

**Meeting Date:** February 12, 2015

**Agenda Item:** Deep Creek Instream Flow Water Right Lease

**Division:** Fisheries

**Action Needed:** Final

**Time Needed on Agenda for this Presentation:** 10 minutes

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### **Background**

Deep Creek is an important spawning tributary for the Missouri River. During the summer and fall, dewatering due to irrigation negatively impacts stream flow in Deep Creek, which negatively impacts the fishery. In 2013, flow in Deep Creek substantially improved due to a change in source of supply from Deep Creek to the Broadwater-Missouri Canal. Legally changing existing irrigation rights to instream flow will protect these flow improvements. The City of Townsend, which has the second priority irrigation water rights on Deep Creek, wants to negotiate a water right lease with FWP.

In August, the Commission directed FWP to negotiate a water-right lease with the city. FWP drafted a 10-year lease agreement at a cost of 1,000 per year, which the Townsend City Council approved on Jan. 6, 2015. The temporary water-right change, however, is subject to the approval of the Montana Department of Natural Resources and Conservation. The city has expended considerable resources in researching its water rights, which will benefit FWP in preparing the water-right application.

### **Public Involvement Process & Results**

The water-right lease was subject of public meetings in July when the Townsend City Council approved moving forward with negotiations, and again when the city council approved the lease agreement. Additionally, to change the city's water rights to instream flow, FWP must make application to DNRC, which would trigger an additional opportunity for comment. DNRC will also conduct an environmental review.

### **Alternatives and Analysis**

One alternative would be for FWP to not acquire the water rights for instream flow conservation. Improvements to flow-related habitat in Deep Creek may be foregone. Another alternative would be for the City of Townsend to temporarily change its water right to instream flow without the involvement of FWP. This alternative would require the city to incur the legal and technical cost of pursuing the change to instream flow and to monitoring and managing the temporary change for the benefit of the public fishery. The city could chose other options, such as sale of the right to the highest bidder, instead of taking on the cost associated with undertaking the change to instream flow on its own.

### **Agency Recommendation & Rationale**

FWP recommends that the Commission approve the water-right lease agreement with the City of Townsend and direct FWP to file an application with DNRC to temporarily change the water right to instream flow.

### **Proposed Motion**

I move to approve the water-right lease with the City of Townsend and direct FWP to submit to DNRC an application to temporarily change the water rights to instream flow, as described in the lease agreement.